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NEW YORK STATE SUPREME COURT
COUNTY OF WESTCHESTER : PART WDD

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ELIZABETH MARGRABE and ANTHONY J. RUSCIANO,
III, as shareholders of RUSCIANO & SON, CORP.,
SECOR LANE CORP. and VINRUS CORP., suing in
the right of RUSCIANO & SON CORP., SECOR LANE
CORP., and subsidiaries and VINRUS CORP.,
ELIZABETH MARGRABE and ANTHONY RUSCIANO, III,
Individually,

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Plaintiffs,

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-against-

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ANTHONY J. RUSCIANO, II, RUSCIANO & SON CORP,
VINRUS CORP., SECOR LANE CORP., and
subsidiaries, PVE COMPANY JOINT VENTURE, PVE
II CO., TONGENE REALTY COMPANY, and RUSCIANO
ASSOCIATES, INC.,

Defendants.

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INDEX NO. 10032/2001

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Westchester County Courthouse

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111 Martin Luther King Blvd.

White Plains, N.Y. 10601

June 18, 2003

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B E F O R E:

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HON. W. DENIS DONOVAN,
Justice of the Supreme Court

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A P P E A R A N C E S:

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SEXTER & WARMFLASH, P.C.

Attorneys for Plaintiffs

19

115 Broadway

New York, N.Y. 10006

20

BY: DAVID WARMFLASH, ESQ.

AND: MICHAEL PRESENT, ESQ.

21

CUDDY & FEDER, LLP

22

Attorneys for Defendants

90 Maple Avenue

23

White Plains, N.Y. 10601-5196

BY: JOSHUA J. GRAUER, ESQ.

24

AND: JOSHUA E. KIMERLING, ESQ.

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JOLINDA FIORE,
Official Court Reporter

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(In open court.)

THE COURT: Ready to go?

MR. GRAUER: Yes your Honor. With the consent of plaintiff's attorneys I will endeavor to put on the record the structure and the specific figures agreed to in full settlement of this action and, of course, I invite plaintiffs' attorneys to clarify anything I say afterwards or to correct anything that I say that may be in error.

Throughout the morning, with the assistance of the Court, the respective attorneys on behalf of plaintiffs and defendants have met with the Court and endeavored to come up with the basic and fundamental financial terms for a complete and comprehensive settlement of every claim in this action pending in Supreme Court of the State of New York, County of Westchester under index number 10032/2001. And to come up with a complete settlement agreement, which

PROCEEDINGS

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2 would encompass not only release and
3 discontinuance and dismissal, with
4 prejudice, of every single claim in this
5 action and every other claim of whatever
6 kind or nature whatsoever that could
7 have been interposed in this or any
8 other action by and between plaintiffs
9 and all of the defendants.

10 But, in addition, during the course
11 of the settlement negotiations in this
12 action, the parties have agreed to a buy
13 out of the plaintiffs' interest in every
14 single corporation and partnership and
15 entity that is involved in this action
16 and is a named defendant, including but
17 not limited to Rusciano & Son Corp.,
18 Vinrus Corp., Secor Lane Corp. and
19 subsidiaries, PVE Company Joint Venture,
20 PVE II Company, Tongene Realty Company
21 and Rusciano Associates, Inc.

22 As part of this comprehensive
23 settlement it will be necessary for the
24 attorneys for the respective parties to
25 prepare general releases from all of the

PROCEEDINGS

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2 plaintiffs to all of the defendants and
3 vice versa excluding, of course, any
4 terms to be performed subject to this
5 stipulation of settlement. And, in
6 addition, as part of this settlement,
7 there will be a release of Anthony J.
8 Rusciano in connection with any prior
9 performance by Mr. Rusciano as trustee,
10 executor, or any fiduciary capacity
11 under any trust.

12 This is a global and comprehensive
13 settlement of every claim of any kind
14 and nature whatsoever as between the
15 plaintiffs individually and any
16 representative capacity and the
17 defendants with full res judicata and
18 collateral estoppel implications as to
19 all matters.

20 The actual settlement stipulation,
21 the long form settlement stipulation is
22 not being dictated by either attorneys
23 today on the record, as it is
24 contemplated that it will be a long form
25 agreement, which will be subject to

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2 review and approval of the accountants
3 and corporate attorneys for all of the
4 different parties including, in
5 particular, subject to the advice and
6 approval, not as to the figures, but as
7 to allocation and as to the terms of the
8 settlement instruments, the tax advice
9 of Mr. Rusciano's accountant and
10 corporate counsel and, of course, to the
11 tax advice of the defendants-- I'm
12 sorry, of the plaintiffs, rather, and of
13 course the counsel and corporate counsel
14 of the plaintiffs.

15 A material part of this settlement
16 stipulation is the understanding that
17 subject to Mr. Rusciano and the
18 defendants' full performance of all of
19 the terms and provisions of this
20 stipulation and settlement and
21 throughout the period of time that he
22 will be making payments, which I will
23 get to in a moment, it is a material
24 part of this agreement that he will have
25 one hundred percent freedom and control

PROCEEDINGS

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2 to operate all of the entities and all
3 of the properties.

4 However, we have agreed that on a
5 regular annual basis we shall instruct
6 our accountant, as part of this
7 settlement stipulation, to routinely
8 forward tax returns for each and every
9 entity, defendant entity in this
10 caption, either to the plaintiffs at
11 their home addresses, or if they
12 designate in the settlement stipulation,
13 the law office of David Warmflash. To
14 whatever address the plaintiffs would
15 like the tax returns to be sent on an
16 annual basis, Mr. Rusciano and the
17 defendant corporations have agreed and
18 partnerships have agreed to do so.

19 So that plaintiffs will be kept, on
20 an annual basis, up to the minute
21 informed as to all of the financial
22 dealings of these entities as reflected
23 in each and every tax return to be filed
24 from and after the date hereof.

25 In addition, Mr. Rusciano and the

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defendant corporations and partnerships,
as a material part of this agreement,
will have the freedom to mortgage, lease
and sell the properties that are
involved in this action, subject, of
course, to the fact that with respect to
Sun Corp., if the Rusciano Industrial
Park were to ever be sold, it's a
material condition of the right to sell
that particular industrial real estate
complex, would be subject to and
contingent on full payment, prior to
sale or upon sale of any remaining sums
due and owing pursuant to this
settlement stipulation to any of the
plaintiffs.

Furthermore, in the event that any
of the agreements being reached today
would require the approval of the
Surrogate's Court because of trusts
created under probated wills in the
Surrogate's Court of New York State, all
of the parties would agree to cooperate
and assist in attaining such approval.

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But it shall not be required to obtain that approval in advance of the signing of the settlement stipulation and in advance of the making of the payments to be made hereunder.

Furthermore, it is agreed that the amounts which have been agreed to be paid by the defendants and by Anthony J. Rusciano, II personally and to be personally guaranteed by Mr. Rusciano, he will have the right at any time to prepay the agreed sum with no penalty and, of course, with that prepayment there would be a savings of interest, but only of interest. There will be no discount for any such prepayment. But there will neither be a penalty for such prepayment and he would save interest by prepayment.

Having said that, the financial terms of this settlement to my understanding which have been agreed to by all sides are as follows, the defendants shall pay to the order of the

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plaintiffs in whatever proportions
plaintiffs' counsel provides on the
settlement stipulation, whether it's
fifty percent to Elizabeth Margrabe and
fifty percent to Anthony Rusciano or as
otherwise provided in the settlement
stipulation, we will pay the total sum
during the term of this settlement of
eight million three hundred seventy-five
thousand dollars.

And this sum will be paid as
follows, within thirty days of the
signing of the settlement agreements
contemplated hereunder, the defendants
shall pay to the order of plaintiff's
attorneys or as plaintiffs' designate in
the settlement stipulation, the total
amount of one million two hundred fifty
thousand dollars. That sum will be paid
within thirty days of the signing of the
settlement agreements and it is, of
course, subject to collection as is
every single payment obligation set
forth herein.

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The next payment would be due one year thereafter and that payment would be one million one hundred twenty-five thousand dollars. The remaining payments will each be in the amount of one million dollars and to my understanding would be paid as follows:

Assuming that the settlement papers are signed on or about July 1, and I'm using this for purposes of illustration, the next payment would be the sum of one million dollars on or before July 31, 2005. Thereafter, the next payment of one million dollars would be on or before July 31, 2006. The next payment would be one million dollars on or before July 31, 2007. The next payment would be one million dollars on or before July 31, 2008. The next payment would be one million dollars on or before July 31, 2009. And a final payment of one million dollars would be due six months thereafter.

In short, the total payment period

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of time is six and a half years. The total principal payment amount, as I stated previously, and I emphasize the term principal payment amount, is eight million three hundred seventy-five thousand dollars.

There are two further components to the payment obligations assumed herein. Next, the payments will be with interest at the rate of 2.5 percent per annum for the first four years. Of course the first payment of a million two hundred fifty thousand dollars, which is being paid within thirty days of signing, there will be no interest on that payment. But beginning from the date of that payment and going forward, interest shall accrue on the balance at a rate of 2.5 percent per annum for four years.

The final two and a half year period of this payment obligation will be at prime and the settlement papers will reflect how the parties will determine what the prime rate is; as to whether

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they will look to the wall Street Journal on a particular date, but it will be a typical commercially reasonable mechanism of determining the prime interest rate for the final two and a half years of this six and half year pay out.

In addition, it has been agreed by Anthony J. Rusciano and Rusciano & Son Corp., that when a tax certiorari refund is received by Rusciano & Son Corp., in connection with the proceeding commenced and settled by Eugene Albert, MAI and Esq., after payment of attorney's fees, and tenant reimbursements, the defendants, Rusciano & Son Corp. by Anthony J. Rusciano, II agree to immediately remit, after the deduction from the gross sum of the attorney's fees taken by Eugene Albert and after deduction of the tenant reimbursements, Mr. Rusciano shall calculate 37.12 percent of those tax certiorari proceeds. And shall immediately send a

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PROCEEDINGS

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check for 37.12 percent of those tax

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certiorari proceeds to the plaintiffs'

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attorneys for distribution to the

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plaintiffs.

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Let me just take a moment, if I

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might, just to confer with Mr. Kimerling

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and also with Mr. Rusciano to make sure

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that I have stated the basic financial

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terms and also, of course, to ask

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plaintiffs and plaintiffs' counsel if my

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recitation conforms with their memory

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and their understanding and subject to

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whatever clarification or points

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plaintiffs' counsel would like to make,

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I would like to specifically request

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that the Court voir dire Mr. Rusciano

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and the other plaintiffs, so that

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there's no ambiguity as to the financial

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terms.

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THE COURT: Mr. Present.

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MR. PRESENT: Yes, your Honor,

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Michael Present on behalf of the

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plaintiffs. I wanted to clarify just a

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couple of points touched by Mr. Grauer.

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I think he did a good job of touching on the bulk of the terms of the settlement. One area that we disagree in, perhaps we can resolve it, and it's a small point, is that we envision, since we agree on the numbers and we agree on all the terms that the signing and first payment would all occur within thirty days of today. Rather than the first payment--

THE COURT: Agreeable?

MR. GRAUER: That's fine, subject to plaintiff's attorneys not sending us the documents to be signed twenty nine days from today. If we receive it within a week, I certainly think three weeks to review it and finalize it with plaintiffs' counsel and get it signed is enough time. If we receive it in two weeks we might ask for another week.

THE COURT: It will be done quam celerima; swiftly as possible.

MR. PRESENT: The obligation upon consummation of the signing of this long form settlement agreement as envisioned

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by Mr. Grauer and payment of the first payment, the remaining obligation for the balance of payments will be evidenced by a promissory note made on be-- made by all of the defendants in favor of the plaintiffs. That the note is going to be personally guaranteed by the defendant, Anthony J. Rusciano, II. That the note is going to be secured by what the parties have agreed to be in a commercially reasonable manner.

That the-- which will include, but not be limited to holding the documents in escrow, with the law firm as an escrow agent, and that which the parties and their professionals reasonably deem to be proper. We would also like it understood and agreed that the Court will retain jurisdiction over this matter until such time as this agreement is consummated and obligations are satisfied.

That a breach of the agreement and settlement terms will entitle plaintiffs

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to seek regress from the court as contemplated pursuant to the terms of this settlement, i.e. the amount of money they're owed less, in terms of settlement, less what they've been paid. And that jurisdiction would be as against all defendants including the defendant, Anthony Rusciano, II.

THE COURT: Abrogation of those agreements would be met with some kind of sanction, financial or otherwise.

MR. PRESENT: Correct. That the full force of the Court would be behind the terms of the settlement and a security for the settlement. In addition to the tax returns that are going to be provided, there will be information provided by Mr. Rusciano personally, typical to what a person who is seeking a loan would be providing to a lender. And the parties will endeavor to be reasonable, both in what we request and what is provided.

THE COURT: Those reports and 1040,

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whatever they are, 1040E will all be provided on a yearly basis.

MR. GRAUER: We definitely agreed that on a yearly basis we would provide tax returns. We're going to provide financial statement of Anthony J. Rusciano upon the signing of the settlement stipulation and that will only be done once and not on an annual basis. The only tax returns being provided are the tax returns of the entities. We're not providing personal tax returns at any time. We're giving one financial statement. We're signing a personal guarantee. And annually every single tax return of all of the entities will be provided.

MR. PRESENT: I would suggest in lieu of his personal tax returns we just get an annual financial statement. That if there's a material change in his personal financial condition from one year to the next, that we be advised and provided with a financial statement. I

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don't need to see a new one if there's a dollar difference, but if there's any kind of material change in his financial statement, that we be provided with a new financial statement.

MR. GRAUER: We're happy to agree upon the signing of the settlement stipulation we'll provide a financial statement. If at any time during the course of this payment obligation there's a material change in financial statement, Mr. Rusciano will agree in the settlement stipulation and it can be so reflected and will be so ordered, he will acknowledge an obligation to so notify the plaintiffs and to submit an updated financial statement.

But as long as the payments are made and there's no default, I want to emphasize that a material part of this stipulation of settlement is that he will have one hundred percent control and the ability to operate these businesses without interference and but

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for that material part of the settlement stipulation, he would not be agreeing to be making the payments which have been agreed to herein.

MR. PRESENT: It's understood and agreed that as long as there is no default in the payments under the note, and let me take a step back. There will be a promissory note made by the defendants; single promissory note for the entire unpaid principal balance of the settlement agreement which will set forth the interest rate on the entire unpaid portion, pursuant to the terms described by Mr. Grauer, which is two and a half percent on the first four years and prime rate for the balance, provided there's no default under the terms of settlement and under the terms of the note, Mr. Rusciano is free to vote the shares and the interests of the subject defendants, however he chooses.

In the event of default, obviously all bets are off and we can seek

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whatever recourse we're entitled to under the escrow agreement that we envision holding the transfer documents, et cetera.

I think I touched upon it but at the closing, what we envision is the signing of a settlement agreement and the promissory note for the entire unpaid balance and the collateral documents, which will provide the security to the plaintiffs in consideration of them selling their interests and surrendering their voting rights pending full payment.

THE COURT: Who's going to maintain the collateral documents?

MR. PRESENT: I think it would be appropriate that my firm hold it as escrow agents.

MR. GRAUER: I think that's absolutely fine. We would envision as part of this transaction, as payments are made and proportionate interests have been acquired, that whatever

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percentage of stock held in escrow has been purchased, if you will, would be released on a straight percentage basis.

MR. PRESENT: I wouldn't say that's commercially reasonable. Whether you owe a dollar on a mortgage or million dollars on a mortgage, you don't get a satisfaction from the bank until it's paid in full and I wouldn't pretend to--

THE COURT: I think counsel is correct.

MR. PRESENT: And I wouldn't pretend to be able to figure out--

THE COURT: He's only holding it in escrow.

MR. GRAUER: We're fine on that. I was not clear. As long as the aspect and I think it's been reemphasized on the record that from and after the signing of the settlement stipulation, as long as we remain in full compliance we'll have one hundred percent freedom to operate these entities and I need to emphasize that because of the rezoning

1 PROCEEDINGS 22

2 and his need to possibly sell different
3 properties to raise money, to make
4 payments, et cetera.

5 MR. PRESENT: We understand that and
6 we take our duties as escrow agent
7 seriously. There won't be any action
8 taken without notice to both parties.

9 THE COURT: And the agreement to be
10 signed, you want it so ordered by me.

11 MR. GRAUER: It was my understanding
12 that the settlement stipulation will be
13 so ordered and just so that I'm clear, I
14 think I said it before, when we said a
15 hundred percent control and operation,
16 that includes sale, encumbrance,
17 mortgage, lease. The only exception
18 being is that there would be no sale of
19 the Sun Corp. property without a
20 complete due on sale clause and payment
21 of any balance remaining to the
22 plaintiffs.

23 THE COURT: Okay?

24 MR. PRESENT: Yes.

25 THE COURT: Is that it gentlemen?

1 PROCEEDINGS 23

2 MR. GRAUER: For the record--

3 THE COURT: Why don't we have a voir

4 dire.

5 MR. PRESENT: Can we have a moment

6 with our clients?

7 THE COURT: Sure.

8 (Short pause.)

9 MR. WARMFLASH: Would the Court

10 consider breaking for lunch? This has

11 been a long time coming and they would

12 like some time to think it through.

13 MR. GRAUER: What time should we

14 come back?

15 THE COURT: Quarter to three. It's

16 important enough.

17 (Luncheon recess taken.)

18 *****

19 AFTERNOON SESSION.

20 (In open court.)

21 MR. PRESENT: We can proceed with

22 the voir dire.

23 MR. GRAUER: If it please the Court,

24 I'd like to have Mr. Rusciano sworn in

25 to ask him a few questions about the

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settlement corporation.

ANTHONY J. RUSCIANO, II, called as
a Defendant herein, having been duly sworn,
testified as follows:

MR. GRAUER: Mr. Rusciano, could
you state your full name and address.

MR. RUSCIANO: Anthony J. Rusciano,
51 Echo Bay Drive, New Rochelle, New
York 10803.

MR. GRAUER: You were a defendant in
the present litigation; is that correct?

MR. RUSCIANO: That's correct.

MR. GRAUER: You're an officer of
all of the corporations that are
defendants in this action?

MR. RUSCIANO: Yes I am.

MR. GRAUER: You are also a
partner in the partnerships that are
defendants in this action?

MR. RUSCIANO: Yes I am.

MR. GRAUER: You know the
plaintiffs who brought this action;
correct?

Mr. Rusciano: Yes I do.

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PROCEEDINGS

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MR. GRAUER: You're familiar with the claims in this action?

MR. RUSCIANO: I am familiar.

MR. GRAUER: Have you been in court today throughout the settlement negotiations?

MR. RUSCIANO: Yes I have.

MR. GRAUER: Did you authorize your attorneys, on your behalf, to engage in settlement negotiations?

MR. RUSCIANO: Yes I have.

MR. GRAUER: Did you listen carefully in court to the terms of the settlement stipulation dictated into the record before the lunch break?

MR. RUSCIANO: I did.

MR. GRAUER: Did you understand those terms?

MR. RUSCIANO: I do.

MR. GRAUER: Do you agree to those terms of your own free will and accord.

MR. RUSCIANO: Yes I do.

MR. GRAUER: Were any of the terms that you listened to in any respect

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unclear to you?

MR. RUSCIANO: No.

MR. GRAUER: Do you understand by agreeing to this stipulation of settlement, you are agreeing to pay the total sum of eight million three hundred seventy five thousand dollars for a release of all of the claims as set forth in the settlement stipulation and for a buy out of the plaintiffs' interest in all of the entities as well?

MR. RUSCIANO: Yes I do.

MR. GRAUER: You understand that the payment period is six and a half years?

MR. RUSCIANO: Yes I do.

MR. GRAUER: You also understand that pursuant to this settlement you will be delivering a personal guarantee?

MR. RUSCIANO: Yes.

MR. GRAUER: And a financial statement at the time of the signing of the guarantee?

MR. RUSCIANO: Yes.

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MR. GRAUER: Do you agree to sign and deliver the personal guarantee and the financial statement to plaintiffs' counsel?

MR. RUSCIANO: Yes.

MR. GRAUER: Are you aware that in the event of a failure by you to perform any of the terms of this stipulation, including the payment obligations, that the plaintiffs would be entitled to seek to enforce the settlement stipulation, which will be signed by Judge Donovan, by means of contempt or pursuit of financial sanctions?

MR. RUSCIANO: Yes I understand.

MR. GRAUER: Is it also your understanding that pursuant to the settlement you will be able to have, going forward, full control of all of the properties and ability to lease, sell or mortgage those properties without any interference or involvement whatsoever on the part of the plaintiffs?

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MR. RUSCIANO: Yes.

MR. GRAUER: Is that a material aspect of your agreement to these settlement terms?

Mr. Rusciano: Absolutely.

MR. GRAUER: Have you been satisfied with the efforts of your counsel throughout this matter? That's one of the questions generally suggested.

MR. RUSCIANO: Yes.

MR. GRAUER: Do you further understand that your ability to have the exclusive control of all of the properties, including the rights to lease, sell or mortgage any of the properties will be so long as you are in compliance with the terms of the settlement stipulation and not in default thereunder?

MR. RUSCIANO: Yes I understand.

MR. GRAUER: Do you have any concern about your ability to perform the terms you agreed to today?

MR. RUSCIANO: No I don't.

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THE COURT: Mr. Rusciano, do you feel your attorneys, Mr. Josh Grauer and Mr. Josh Kimerling have done everything possible to represent you as a good trial lawyers?

MR. RUSCIANO: Yes I do.

THE COURT: Your very pleased with everything they've done on your behalf.

MR. RUSCIANO: Very pleased with everything he's done.

THE COURT: I hate to ask you, but I must ask everyone. You represent to the Court you're not under the influence of alcohol, or drugs or anything which would in anyway inhibit your ability to understand what you're saying here today?

MR. RUSCIANO: Absolutely not.

MR. GRAUER: I'd like the plaintiffs to be--

ANTHONY J. RUSCIANO, III called as a Plaintiff herein, having been duly sworn, testified as follows:

THE COURT: State your full name

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please for the record?

MR. RUSCIANO: Anthony J. Rusciano,
III, 4 Upland Court, South Salem, New
York.

THE COURT: Mr. Present.

MR. PRESENT: Yes. Mr. Rusciano,
are you one of the named plaintiffs in
this action?

MR. RUSCIANO, III: Yes I am.

MR. PRESENT: Did you direct the
commencement of this action?

MR. RUSCIANO, III: Yes.

MR. PRESENT: Did you and your
sister Elizabeth Margrabe retain the law
firm of Sexter & Warmflash to represent
you in this action?

MR. RUSCIANO, III: Yes.

MR. PRESENT: Were you in attendance
and did you participate in the
settlement negotiations which transpired
this morning?

MR. RUSCIANO, III: Yes.

MR. PRESENT: Were you in court
this morning when Mr. Grauer and myself

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2 dictated on the record the terms of the

3 settlement?

4 MR. RUSCIANO, III: Yes.

5 MR. PRESENT: Did you understand

6 the terms as they were dictated into the

7 record?

8 MR. RUSCIANO, III: Yes.

9 MR. PRESENT: Did you agree with

10 the terms of the settlement. Are you

11 going to abide by the terms of the

12 settlement?

13 MR. RUSCIANO, III: Yes.

14 MR. PRESENT: Do you understand that

15 you will be selling all of your

16 ownership interests in all of the

17 Rusciano family companies as named in

18 the caption of this action?

19 MR. RUSCIANO, III: Yes I do.

20 MR. PRESENT: And do you

21 understand that pending full payment,

22 provided the defendants are not in

23 default, you will not have the right to

24 vote your shares of the corporations or

25 your partnership interests pending full

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payment?

MR. RUSCIANO, III: I understand.

MR. PRESENT: Do you understand in addition to selling your ownership interests, you are settling your derivative claims, the claims which have arose during the term of your ownership of the stock?

MR. RUSCIANO, III: Yes.

MR. PRESENT: And you will not be able to bring another action in connection with these ownership interests for monies you might otherwise have been entitled to receive as shareholder or partner?

MR. RUSCIANO, III: Yes.

MR. PRESENT: I have no further questions.

THE COURT: Anything about this settlement, Mr. Rusciano, that you do not understand?

MR. RUSCIANO, III: No, sir.

THE COURT: Any questions you have to ask of your attorneys?

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MR. RUSCIANO, III: No.

THE COURT: In like manner as I asked the other Mr. Rusciano, you represent to the Court that you're very pleased with everything that your attorney Michael Present has done on your behalf?

MR. RUSCIANO, III: Yes.

THE COURT: All actions taken on your behalf, you are very pleased with everything he has done and he's done it in an attorney-like manner?

MR. RUSCIANO, III: Yes.

THE COURT: I apologize, but I must ask you, do you represent to the Court you're not under the influence of alcohol or drugs or anything which would, in anyway, prevent you from understanding this settlement?

MR. RUSCIANO, III: Yes, sir.

THE COURT: You so represent that you're not under the influence of alcohol or drugs or anything else?

MR. RUSCIANO, III: Yes.

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MR. GRAUER: Do you understand that you will be releasing Mr. Rusciano and all of the defendants in every capacity, including any claims against Mr. Rusciano in connection with any services he performed as a trustee under any trusts, under wills for every issue or matter relating to the past?

MR. RUSCIANO, III: Yes.

MR. GRAUER: You've agreed to those terms; correct?

MR. RUSCIANO, III: Yes.

MR. GRAUER: And you also understand you will not interfere, subject to Mr. Rusciano performing his obligations under the settlement stipulation, with any of the activities of Mr. Rusciano on behalf of all of the defendants; is that correct?

MR. RUSCIANO, III: Correct.

MR. GRAUER: And you are selling all of your ownership interests in all of the defendant entities; correct?

MR. RUSCIANO, III: Correct.

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MR. GRAUER: Do you further understand that by this settlement you have agreed or the settlement papers will reflect that both defendants and plaintiffs will cooperate in execution of any instrument necessary to carry out this stipulation and the intent of the stipulation, including any future efforts by Mr. Rusciano to lease, sell or mortgage any of the properties subject, of course, to his agreement that if he sells the Sun Corp. properties, the entire remaining debt would be paid in full at or prior to that closing?

MR. RUSCIANO, III: Yes.

MR. GRAUER: I have no further questions. Thank you very much.

ELIZABETH RUSCIANO MARGRABE, a Plaintiff herein, having been duly sworn, testified as follows:

THE COURT: Your full name is Elizabeth Margrabe?

THE WITNESS: Elizabeth Rusciano

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Margrabe.

THE COURT: Give us your address.

MS. MARGRABE: 31 Priory Lane,
Pelham, New York.

THE COURT: Okay.

MR. PRESENT: Miss Margrabe, are you
the other plaintiff in this action?

MS. MARGRABE: Yes I am.

MR. PRESENT: Did you, together
with your brother, engage my firm,
Sexter & Warmflash, to bring this action
on your behalf?

MS. MARGRABE: Yes.

MR. PRESENT: Were you in court and
in attendance at court today during the
terms of the settlement negotiations
that went on.

MS. MARGRABE: Yes I was.

MR. PRESENT: Were you in court
this morning when myself and Mr. Grauer
dictated into the record the terms of
the settlement of this action?

MS. MARGRABE: Yes.

MR. PRESENT: Did you understand the

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terms of the settlement?

MS. MARGRABE: Yes.

MR. PRESENT: Do you have any questions concerning the terms of the settlement?

MS. MARGRABE: No.

MR. PRESENT: Do you understand that by entering into the settlement, you will be selling all of your ownership interests, be they as a shareholder or a partner, whether the shares are owned directly or through-- indirectly through trusts, in all of the Rusciano companies, and I mean partnerships and corporations named in this action?

MS. MARGRABE: Yes.

MR. PRESENT: Do you understand in addition to selling your interests, you're settling your derivative claims, any claims that you're bringing individually or on behalf of the companies in connection with monies you could have received as a shareholder or partner during your term of ownership?

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MS. MARGRABE: Yes.

MR. PRESENT: Do you understand by settling this action, you will not be able to bring any additional actions asserting any claims arising from your past ownership of any of these companies?

MS. MARGRABE: Yes.

MR. PRESENT: And that you're settling those claims not only as against the companies themselves, but also as against the defendant, Anthony J. Rusciano, II in terms of management of the company?

MS. MARGRABE: Yes.

MR. PRESENT: No further questions.

THE COURT: Mrs. Margrabe, do you feel that your attorneys, Mr. Warmflash and Mr. Present have done everything they possibly could in representing your interests?

MS. MARGRABE: Yes.

THE COURT: You're very pleased with

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everything they've done on your behalf?

MS. MARGRABE: Yes I am.

THE COURT: Do you realize this is for all time. You can't come back and say this wasn't fair and equitable. Do you understand that?

MS. MARGRABE: I do.

THE COURT: Do you until feel that under all the attendant circumstances that the agreement was fair and equitable?

MS. MARGRABE: Yes.

THE COURT: Once again I apologize, but I must ask these questions. Do you represent to the court you're not under the influence of alcohol or drugs or anything which, in anyway, would inhibit your ability to understand what you're saying here today?

MS. MARGRABE: Yes.

THE COURT: Yes you're not under the influence?

MS. MARGRABE: I'm not under the

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influence.

THE COURT: And yes, you fully understand?

MS. MARGRABE: I fully understand.

THE COURT: Anything you wanted to ask your attorneys?

MS. MARGRABE: No.

MR. GRAUER: Can I repeat very briefly, I apologize, the same questions. You understand that you're releasing Mr. Rusciano in every capacity including as a trustee of any trusts or as an executor under any prior wills connected in any way, shape or form to any family matters by this settlement?

MS. MARGRABE: Yes.

MR. GRAUER: Do you understand, by this settlement, you and your brother and all representatives on your behalf have agreed not to interfere with any of business dealings of any of the defendants and to cooperate in efforts to sell, lease or mortgage any of the properties and that Mr. Rusciano will

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have full control subject to his
performance of his obligations?

MS. MARGRABE: Yes.

MR. GRAUER: Do you agree to sign
any reasonable documents prepared by
your attorneys or the attorneys for the
defendants deemed necessary to carry out
spirit and intent of this settlement
stipulation?

MS. MARGRABE: Yes.

MR. GRAUER: And you also understand
you will have no right to vote, as part
of this settlement stipulation, to vote
any of your shares?

MS. MARGRABE: Yes.

MR. GRAUER: No further questions,
thank you.

THE COURT: No one else to be voir
dired?

MR. GRAUER: No.

THE COURT: I want to thank all
counsel. You are truly fine
representatives of the Bar and true
gentlemen. Thank you. It's been very

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nice dealing with all of you. Thank you
very kindly.

MR. GRAUER: Thank you.

MR. WARMFLASH: Thank you, Judge.

THE COURT: Josh, are your going to
prepare the--

MR. GRAUER: No. Why don't we put
that on the record.

THE COURT: Why don't we put on who
is doing what.

MR. GRAUER: One final note. This
is just to confirm that the attorneys
for the plaintiffs will be preparing all
of the settlement instruments and
documentation contemplated by this
settlement and they will forward it to
us, as counsel for the defendants, at
which time we will provide it to the
corporate counsel and accountants for
the defendants to provide their advice
and input and comment on the documents.

And upon receipt, we will endeavor
to expeditiously provide feedback to
plaintiffs' counsel and try to

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consummate any remaining issues that need to be addressed without in any way, shape or form modifying the terms and, in fact, the financial terms, those are engraved in stone. No one will try to change any of those terms. We will endeavor in good faith to sign the stipulation and submit it to be so ordered within approximately three weeks from when we receive it from plaintiffs' attorneys.

MR. WARMFLASH: We will send copies of the draft directly to the accountant and corporate attorney.

MR. GRAUER: Our firm will be acting as corporate attorneys, but we were going to provide it to Enid Hoffman, CPA to obtain her advice and input as to the allocation and structure.

THE COURT: It's going to be so ordered?

MR. GRAUER: Yes.

MR. PRESENT: Thank you again.


(Proceedings concluded.)

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CERTIFIED TO BE A TRUE AND CORRECT
TRANSCRIPT IN THIS CASE.

A handwritten signature in cursive script, appearing to read "J. Fiore", is written over a horizontal dashed line.

JOLINDA FIORE

official Court Reporter